



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FTI/145050

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely .

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Alma Lezama, HSPC, Sr.
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 19, 2012, the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], asserting a \$1400.00 over payment from September 1, 2011 through March 31, 2012. (Exhibit 5)
3. On May 2, 2012, the agency sent Petitioner a repayment agreement. (Exhibit 7)

4. On June 4, 2012, the agency sent Petitioner a dunning notice reminding her about the \$1400 overpayment that she needed to repay. (Exhibit 8)
5. On July 3, 2012, the agency sent Petitioner a second dunning notice. (Exhibit 9)
6. On August 2, 2012, the agency sent Petitioner a third dunning notice. (Exhibit 10)
7. On September 14, 2012, the agency sent Petitioner a notice, indicating that it may intercept any tax refund, to which she might be entitled, to satisfy the \$1400 overpayment of FoodShare benefits. (Exhibit 1 and 4)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 7, 2012.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2 In this case, the date of the notice was September 14, 2012. As such, Petitioner needed to file her appeal by October 15, 2012. Her appeal was not filed until November 7, 2012. As such, her appeal is untimely, with regard to the issue of the tax intercept, and there is no jurisdiction to hear the merits of her appeal.

At the hearing, Petitioner indicated that she wished to appeal because she disagreed with the agency's determination that she was overissued Foodshare benefits in 2002 and between September 1, 2011 and March 31, 2012.

First, there is no issue for the Division of Hearings and Appeals to resolve with regard to an overpayment from 2002 because Ms. Lezama, the agency representative, indicated that the agency was not currently seeking repayment of an overpayment from 2002. Indeed, if one looks at the dunning notices, there is no balance due indicated with regard to any overpayment that might have occurred in 2002. (See Exhibits 8, 9 and 10)

Second, at a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination.

Third, even if the determination of FoodShare Overissuance was a proper subject for a hearing concerning the use of a tax intercept to collect the overissuance, Petitioner's appeal regarding whether she was overissued \$1400 in FoodShare benefits between September 1, 2011, and March 31, 2012, is untimely.

An appeal of a negative action, including determination of an overissuance, must be filed within 90 days of the date of that action. 7 CFR, §273.15(g).

In this case, the date of action was April 19, 2012, the date the agency sent Petitioner the Notification of FoodShare Overissuance. (See Exhibit 5) As such, Petitioner needed to file her appeal of the overissuance determination by July 23, 2012. She did not file an appeal until November 7, 2012, well past the appeal deadline. As such, Petitioner's appeal of the determination of FoodShare Overissuance is untimely and there is no jurisdiction to hear the merits of that issue.

CONCLUSIONS OF LAW

Petitioner's appeal is untimely and there is no jurisdiction to hear the merits of her appeal.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new

evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

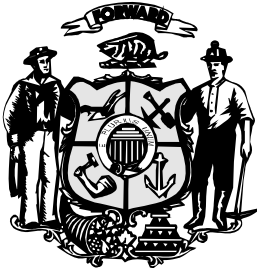
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of January, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 15, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability